



Project title: Professional Services Agreement with Volunteers of America, North Sound 211

City Council Agenda Item Cover Sheet

Council Bill # *interoffice use*

Project: North Sound 211 Services

Partner/Supplier : Volunteers of America, North Sound 211

Agenda dates requested:

Location: *n/a*

3/4/20

Preceding action: *n/a*

Briefing

Fund: 009/Admin

Proposed action

Consent

Action

Ordinance

Public hearing

Yes ☒ No

Fiscal summary statement:

The City shall pay Volunteers of America \$16,770, which is equal to \$0.15/per capita in 2020.

Budget amendment:

Yes ☒ No

Project summary statement:

PowerPoint presentation:

Yes ☒ No

North Sound 211, which is housed and fiscally managed by Volunteers of America, provides locally curated social services information for approximately 15,000 Everett Residents each year. Information and Referral is accessed via the 211 web site, by phone, or in person with a navigator.

Attachments:

VOA Professional Services Agreement

Department(s) involved:

Community Development

The City has historically paid \$0.15/ per capita each year for 211 services. This year a Professional Services Agreement is being established to formalize.

Contact person:

Julie Frauenholtz

Phone number:

425-257-7120

Email:

jfrauenholtz@everettwa.gov

Initialed by:

Department head

Administration

Council President

Recommendation (exact action requested of Council):

Authorize the Mayor to sign a Professional Services Agreement with Volunteers of America, North South 211.

**CITY OF EVERETT
PROFESSIONAL SERVICES AGREEMENT**



THIS AGREEMENT made and entered into on this 31st day of January, 2020, by and between the **CITY OF EVERETT**, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "City," and Volunteers of America, whose address 2802 Broadway, Everett WA 98201, hereinafter referred to as the "Service Provider."

WHEREAS, the City desires to engage Service Provider to provide North South 211 services for the City of Everett; and

WHEREAS, Service Provider represented, and by entering into this Agreement now represents, that it is fully qualified to perform the work to be performed hereunder in a competent and professional manner;

NOW, THEREFORE, the parties herein do mutually agree as follows:

1. **Engagement of Service Provider.** In a competent and professional manner, Service Provider shall provide the following services (hereafter referred to as "Work"): Locally curated social services information for Everett residents via their website, phone number, or in person navigators. Without a written directive of an authorized representative of the City, Service Provider shall not perform any services that are in addition to, or beyond the scope of, the Work between the City and Service Provider. If Service Provider's proposal is attached as an exhibit, and if such proposal contains or incorporates any conditions or terms in addition to or different from the terms of this Agreement, then Service Provider expressly agrees that such conditions or terms are neither incorporated nor included into this Agreement between the City and Service Provider.
2. **Intellectual Property Rights.** Unless otherwise expressly agreed in writing, all intellectual property rights in works created pursuant to this Agreement, or for the City of Everett, belong to the City of Everett. Service Provider retains any intellectual property rights in works created by Service Provider prior to engagement, or not for its performance of this Agreement. Service Provider expressly represents and warrants that the Work shall be original and shall not infringe on another's copyright, or rights in trade or service marks. Service Provider agrees to defend and indemnify City from any and all claims and damages arising out of this Agreement or the Work created hereunder.
3. **Time of Beginning and Completion of Performance.** This Agreement shall commence as of the date of execution of this Agreement and shall be completed by December 31, 2020.
4. **Compensation.**
 - A. The City shall pay Service Provider only for completed Work and for services actually rendered which are described herein. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment, and incidentals necessary to complete the Work.
 - B. Service Provider shall be paid such amounts and in such manner as follows: The City shall pay Service provider \$16,770, which is equal to \$0.15/ per capita of Everett residents, based on a population of 111,700. Service Provider will provide the City with an annual invoice and statistical report of North Sound 211 activity on or before December 1, 2020.

C. Service Provider may receive payment as reimbursement for Eligible Expenses actually incurred. "Eligible Expenses" means those types and amounts of expenses approved for reimbursement by the City. If approval for reimbursement is not obtained from the City prior to Service Provider's incurring the expense, Service Provider acknowledges that the City retains the option not to reimburse Service Provider. Eligible expenses shall not exceed \$0.

D. Total compensation, including all services and expenses, shall not exceed a maximum of \$16,770.

E. If Service Provider fails or refuses to accept direction or carry out the reasonable directions of the City in performance of its work, the City may, in addition to any other remedy, withhold from any payment otherwise due an amount that the City in good faith believes is equal to the cost to the City of correcting, re-procuring, or remedying any damage caused by Service Provider's conduct.

5. **Termination of Contract.** City reserves the right to terminate this Agreement at any time by sending written notice of termination to Service Provider ("Notice"). The Notice shall specify a termination date ("Termination Date") at least fourteen (14) days after the date the Notice is issued. The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Service Provider (whether by fax, mail, delivery or other method reasonably calculated to be received by Service Provider in a reasonably prompt manner) or three calendar days after issuance of the Notice. Upon the Notice Date, Service Provider shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Service Provider's material breach, Service Provider shall be paid or reimbursed for: (a) all hours worked and Eligible Expenses incurred up to the Notice Date, less all payments previously made; and (b) those hours worked and Eligible Expenses incurred after the Notice Date, but prior to the Termination Date, that were reasonably necessary to terminate the Work in an orderly manner. Notices under this Section 7 shall be sent by the United States Mail to Service Provider's address provided herein, postage prepaid, certified or registered mail, return receipt requested, or by delivery. In addition, Notices may also be sent by any other method reasonably believed to provide Service Provider actual notice in a timely manner, such as fax. The City does not by this Section 7 waive, release, or forego any legal remedy for any violation, breach, or non-performance of any of the provision of this Agreement. At its sole option, City may deduct from the final payment due Service Provider (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other backcharges or credits. The City shall not pay Service Provider for any expenses incurred or work done following the effective date of termination unless authorized in writing by the City before the expenses are incurred or the work is done.

6. **Changes.** The City may, from time to time, unilaterally decrease the scope of the services of Service Provider to be performed hereunder. Such decrease in the scope of work (and resulting decrease in compensation), shall: (a) be made only in writing and signed by an authorized City representative, (b) be explicitly identified as such and (c) become a part of this Agreement.

7. **Subletting/Assignment of Contracts.** Service Provider shall not sublet or assign any of the Work without the express, prior written consent of the City.

8. **Indemnification.**

A. Service Provider will defend and indemnify the City from any and all Claims arising out of, in connection with, or incident to any acts, errors, omissions, or conduct by Service Provider relating to, or arising out of its performance of, this Agreement. Service Provider will defend and indemnify the City whether a Claim is asserted directly against the City, or whether a Claim is asserted indirectly against the City, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the

City. The amount of insurance obtained by, obtainable by, or required of Service Provider does not in any way limit Service Provider's duty to defend and indemnify the City. The City retains the right to approve Claims investigation and counsel assigned to said Claim and all investigation and legal work regarding said Claim shall be performed under a fiduciary relationship to the City.

B. The Service Provider's obligations under this Section 8 shall not apply to Claims caused by the sole negligence of the City. If (1) RCW 4.24.115 applies to a particular Claim, and (2) such Claim is caused by or results from the concurrent negligence of (a) the Service Provider, its employees, subcontractors/subconsultants or agents and (b) the City, then the Service Provider's obligations under this Section 8 shall apply only to the extent allowed by RCW 4.24.115.

C. Solely and expressly for the purpose of its duties to indemnify and defend the City, Service Provider specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. Service Provider recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

D. As used in this Section 8: (1) "City" includes the City, the City's officers, employees, agents, and representatives; (2) "Claims" include all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, whether threatened, asserted or filed against the City, whether such Claims sound in tort, contract, or any other legal theory, whether such Claims have been reduced to judgment or arbitration award, irrespective of the type of relief sought or demanded (such as money or injunctive relief), and irrespective of the type of damage alleged (such as bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages); and (3) "Service Provider" includes Service Provider, its employees, agents, representatives and subcontractors. If, and to the extent, Service Provider employs or engages subcontractors, then Service Provider shall ensure that each such subcontractor (and subsequent tiers of subcontractors) shall expressly agree to defend and indemnify the City to the extent and on the same terms and conditions as Service Provider pursuant to this Section 8.

9. **Insurance.** Service Provider shall procure and keep in force during the term of this Agreement, at Service Provider's own cost and expense, automobile liability insurance on all vehicles used by Service Provider in the performance of its duties under this Agreement. Proof of such insurance shall be provided to the City prior to performing any services hereunder. A statement certifying that no vehicle will be used in fulfilling this Agreement may be substituted for this insurance requirement.

10. **Independent Contractor.**

A. This Agreement neither constitutes nor creates an employer-employee relationship. Service Provider must provide services under this Agreement as an independent contractor. Service Provider must comply with all federal and state laws and regulations applicable to independent contractors including, but not limited to, the requirements listed in this Section 10. Service Provider agrees to indemnify and defend the City from and against any claims, valid or otherwise, made against the City because of these obligations.

B. In addition to the other requirements of this Section 10, if Service Provider is a sole proprietor, Service Provider agrees that Service Provider is not an employee or worker of the City under Chapter 51 of the Revised Code of Washington, Industrial Insurance for the service performed in accordance with this Agreement, by certifying to the following:

- (1) Service Provider is free from control or direction over the performance of the service; and

(2) The service performed is outside the usual course of business for the City, or will not be performed at any place of business of the City, or Service Provider is responsible for the costs of the principal place of business from which the service is performed; and

(3) Service Provider is customarily engaged in an independently established business of the same nature as the service performed, or has a principal place of business for the service performed that is eligible for a business deduction for federal income tax purposes; and

(4) On the effective date of this Agreement, Service Provider is responsible for filing a schedule of expenses, for the next applicable filing period, with the internal revenue service for the type of service performed; and

(5) By the effective date of this Agreement or within a reasonable time thereafter, Service Provider has established an account with the department of revenue and other state agencies, where required, for the service performed for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(6) By the effective date of this Agreement, Service Provider is maintaining a separate set of records that reflect all items of income and expenses of the services performed.

C. Any and all employees of Service Provider, while engaged in the performance of any Work, shall be considered employees of Service Provider only and not of the City, and any and all claims that may or might arise under the Worker's Compensation Act on behalf of said employees or Service Provider, while so engaged in any and all claims made by a third party as a consequence of any negligent act or omission on the part of Service Provider's employees, while so engaged on any of the Work, shall be the sole obligation and responsibility of Service Provider.

D. Service Provider shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the City free, clear and harmless from all actions, claims, demands and expenses arising out of said act, and rules and regulations that are or may be promulgated in connection therewith.

E. Service Provider assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state and, city business and occupation taxes), fees, licenses, excises or payments required by any city, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by Service Provider and as to all duties, activities and requirements by Service Provider in performance of the Work and Service Provider shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

11. **Employment.** Service Provider warrants that it had not employed or retained any company or person, other than a bona fide employee working solely for Service Provider, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Service Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability

or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

12. **Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, Service Provider shall make available to the City for the City's examination all of Service Provider's books, records and documents with respect to all matters covered by this Agreement and, furthermore, Service Provider will permit the City to audit, examine and make copies, excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

13. **City of Everett Business License.** Service Provider shall obtain a City of Everett business license prior to performing any work pursuant to this Agreement.

14. **State of Washington Requirements.** Service Provider shall register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and 51.08.195 prior to performing any work pursuant to this Agreement.

15. **Compliance with Federal, State, and Local Laws.** Service Provider shall comply with and obey all federal, state, and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.

16. **Compliance with the Washington State Public Records Act.** Service Provider acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW (the "Act"). All records owned, used or retained by the City are public records subject to disclosure unless exempt under the Act, whether or not such records are in the possession or control of the City or Service Provider. Service Provider shall cooperate with the City so that the City may comply with all of its obligations under the Act. Within ten (10) days after receipt of notice from the City, Service Provider shall deliver to the City copies of all records relating to this Agreement or relating to the Work that the City determines qualify as the City's public records under the Act. If the City receives a public records request relating to this Agreement or relating to the Work, the City shall seek to provide notice to Service Provider at least ten (10) days before the City releases records pursuant to such public records request, but in no event will the City have any liability to Service Provider for any failure of the City to provide such notice. In addition to its other indemnification and defense obligations under this Agreement, Service Provider shall indemnify and defend the City from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage arising from or relating to any failure of Service Provider to comply with this Section 16.

17. **Compliance with Grant Terms and Conditions.** Service Provider shall comply with any and all conditions, terms and requirements of any federal, state or other grant that wholly or partially funds Service Provider's work hereunder.

18. **Waiver.** Any waiver by Service Provider or the City or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

19. **Complete Agreement.** This Agreement contains the complete and integrated understanding and Agreement between the parties and supersedes any understanding, Agreement or negotiation whether oral or written not set forth herein.

20. **Equal Employment Opportunity.** Service Provider shall not discriminate against any employee, applicant for employment, independent Service Provider, or proposed independent Service Provider, on the basis of race, color, religion, sex, age, disability, marital state, or national origin.

21. **Modification of Agreement.** This Agreement may be modified as provided in paragraph 6, or by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City and Service Provider.

22. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, the remainder of the Agreement shall remain in full force and effect.

23. **Notices.**

A. Notices to the City of Everett shall be sent to the following address:

City of Everett
Attn.: Julie Frauenholtz, Community Development Director
2930 Wetmore Ave, Suite 10A
Everett, WA 98201

B. Notices to Service Provider shall be sent to the following address:

Service Provider
Attn.: North Sound 211 Lisa Hull, Project Manager
2802 Broadway
Everett, WA 98201

24. **Venue.** It is agreed that venue for any lawsuit arising out of this Agreement shall be Snohomish County.

25. **Governing Law.** The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.

26. **Signature.** At the sole discretion of the City, the City may consent to the Service Provider's signature on this Agreement or amendment thereof being by email, fax, photocopy, pdf or other electronic means, in which case such Service Provider signature will be deemed an original signature for all purposes. The City will be deemed to have given such consent effective upon execution of this Agreement or amendment thereof by the Mayor of the City.

IN WITNESS WHEREOF, the City and Service Provider have executed this Agreement as of the date first above written.

SERVICE PROVIDER: Please fill in the spaces and sign in the box appropriate for your business entity.	
CITY OF EVERETT, WASHINGTON _____ Cassie Franklin, Mayor _____ Date	Corporation <u>Volunteers of America Western WA</u> [Service Provider's Complete Legal Name] By: <u>B. Smith</u> Typed/Printed Name: <u>Brian Smith</u> Its: <u>Chief operating officer</u> Date: <u>2/1/2020</u>
ATTEST: _____ Sharon Fuller, City Clerk _____ Date	Partnership (general) [Service Provider's Complete Legal Name] a Washington general partnership By: _____ Typed/Printed Name: _____ General Partner Date: _____
<div style="border: 1px solid black; border-radius: 15px; padding: 10px; text-align: center;"> STANDARD AGREEMENT APPROVED AS TO FORM DAVID C. HALL CITY ATTORNEY </div>	Partnership (limited) [Service Provider's Complete Legal Name] a Washington limited partnership By: _____ Typed/Printed Name: _____ General Partner Date: _____
	Sole Proprietorship Typed/Printed Name: _____ Sole Proprietor: _____ Date: _____
	Limited Liability Company [Service Provider's Complete Legal Name] a Washington limited liability company By: _____ Typed/Printed Name: _____ Managing Member Date: _____

STATE RETIREMENT SYSTEMS FORM
ATTACHMENT TO PROFESSIONAL SERVICES AGREEMENT
ALL SERVICE PROVIDERS MUST COMPLETE AND SIGN THIS FORM

1. Does Service Provider have twenty-five (25) or more employees? ☒ Yes ☐ No
IF YES: SKIP QUESTION 2, SKIP QUESTION 3, AND SIGN BELOW.
IF NO: ANSWER QUESTIONS 2 AND 3.
2. If a Service Provider employee will perform Work under this Professional Services Agreement, did that employee retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS), or Law Enforcement Officers and Fire Fighters plan (LEOFF)? ☐ Yes ☐ No
3. Answer the appropriate question below for Service Provider's business organization:

Sole Proprietor. Did Service Provider retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS), Law Enforcement Officers and Fire Fighters plan (LEOFF)? ☐ Yes ☐ No

Partnership. If a partner will perform Work under this Professional Services Agreement, did that partner retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS) or Law Enforcement Officers and Fire Fighters plan (LEOFF)? ☐ Yes ☐ No

Limited Liability Company. If a member will perform Work under this Professional Services Agreement, did that member retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS) or Law Enforcement Officers and Fire Fighters plan (LEOFF)? ☐ Yes ☐ No

Corporation. If a shareholder will perform Work under this Professional Services Agreement, did that shareholder retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS), or Law Enforcement Officers and Fire Fighters plan (LEOFF)? ☐ Yes ☐ No

IF THERE IS A "YES" ANSWER TO ANY PART OF QUESTIONS 2 OR 3, AN ADDITIONAL QUESTIONNAIRE (AVAILABLE FROM HR OR LEGAL) MUST BE FILLED OUT AND SUBMITTED WITH THE CONTRACT.

Service Provider Name: Volunteers of America Western Washington

Signature: [Signature] Printed Name: Brian Smith Title: C.O.O.